The Corporation Trust Company Journal

MARCH-APRIL
1911

No. 25

CONTENTS

Issued by

The Corporation Trust Company

SYSTEM

37 Wall Street, New York
711 Tremont Building, Boston
281 St. John Street, Portland, Me.
901 Market Street, Wilmington, Del.
501 Colorado Bldg., Washington, D.C.
1637 Oliver Building, Pittsburg
112 West Adams Street, Chicago
15 Exchange Place, Jersey City
700 Land Title Building, Philadelphia
922 New Bank of Commerce Building
St. Louis
304 Market Street, Camden, N. J.
95 Gresham Street, London, E. C.

THE WORKMEN'S COMPENSATION LAW OF NEW YORK has been declared unconstitutional by the Court of Appeals of that State (Ives vs. South Buffalo Railway Co., decided March 24, 1911; not yet reported.) This action was brought to recover compensation under the new law (Chapter 674 of the Laws of 1910) for an injury received solely by reason of a necessary risk or danger of employment. The answer, after admitting all the allegations of the complaint pleaded as a defence the unconstitutionality of the law. The opinion of the Court (Werner J.) states that the new statute abrogates the "fellow servant" doctrine, the "contributory negligence" rule and the law relating to the employe's assumption of risk. The first two it holds may be regulated or even abolished by the legislature and that this is true to a limited extent of the assumption of risk by the employe, but only up to that point where the employer would be deprived of his constitutional rights. It summarizes the rule of liability under the new law thus: "That the employer is responsible to the employe for every accident in the course of employment, whether the employer is at fault or not and whether the employe is at fault or not, except when the fault of the employe is so grave as to constitute serious and wilful misconduct on his part," and remarks that the statute judged by our common law standard is revolutionary and further that no matter how attractive or desirable it may be the Court must regard that as subordinate to the primary question as to whether it infringes upon the letter or the spirit of the written constitution. The Court passes over the question as to whether the "scale of compensation" fixed by the law deprives the employer of the right to have a jury fix the amount which he shall pay, when his liability to pay has been determined against him, and holds that the liability of the employer imposed by the statute plainly constitutes a deprivation of liberty and property under the Federal and New York State Constitutions, because when these constitutions were adopted it was the law of the land that no man who was wihout fault or negligence could be held liable in damages for injuries sustained by another, and that this is still the law except as to employers enumerated in the new statute. With regard to justifying the statute under the police power of the State, it holds that while under this power persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State it is still a power subject to the constitution and when an industry or calling is *per se* lawful and open to all and therefore beyond the prohibitive power of the Legislature, the right of governmental control is subject to such reasonable enactments as are directly designed to conserve health, safety, comforts, morals, peace and order. For the failure of an employer to observe such regulations the Legislature may unquestionably enact direct penalties or create presumptions of fault which, if not rebutted by proof, may be regarded as sufficient evidence of liability for damages. That must be the extreme limit of the police power, however, for just beyond is the constitution, which in substance and effect forbids that a citizen shall be penalized or subjected to liabilities unless he has violated some law, or has been guilty of some fault. Since the sole purpose of the new law is to make the employer liable for injuries which may be sustained wholly without his fault, even through an accident which no human being can foresee or prevent, or which if preventable at all can only be prevented by the reasonable care of the employe himself, it is beyond the limit of the police power.

The Bank Guarantee Law cases (Noble State Bank vs. Haskell, 219 U. S. 104; Assaria State Bank vs. Dolley, 219 U. S. 121) recently decided by the Supreme Court of the United States, were held by the Court to have no application under the provisions of the Constitution of New York.

A DECISION OF WIDESPREAD INTEREST on the subject of agreements in restraint of trade was handed down by the United States Supreme Court on April 3, 1911 (Dr. Miles Medical Company, Petitioner, vs. John D. Park & Sons Company). The Medical Company had agreements with about four hundred wholesale distributors and twenty-five thousand retail dealers in the United States. The agreements with the wholesale distributors specified that its medicines should not be sold at less than a certain price, and the title

to the goods should remain in the Medical Company until finally sold by the distributors. The agreements further provided that sales of all goods and products of the Medical Company should be confined strictly to retail dealers designated by the company. With these retail dealers the Medical Company had agreements stipulating that the goods were not to be sold at less than the full retail price printed on the packages. The defendant refused to enter into contract with the Medical Company but obtained the goods of the Company by persuading the complainant's "wholesale and retail agents" to violate their contracts. These goods were then sold by the defendant at cut-rate prices. The complainant invoked the established doctrine that an actionable wrong is committed by one who maliciously interferes with a contract between two parties and induces one of them to break that contract to the injury of the other.

The court holds that the restrictions placed upon the sale of the goods cannot be justified on the ground that the goods are proprietary medicines manufactured under a secret process and discusses the question as to whether a manufacturer is entitled to control the prices on all sales of his own product. It holds that whatever right the manufacturer may have to project his control beyond his own sales must depend not upon an inherent power incident to production and original ownership but upon agreement. That the agreements in question are designed to maintain prices and to prevent competition among retail dealers. That the validity of agreements to prevent competition and to maintain prices is not to be determined by the circumstance whether the goods were produced by several manufacturers or by one, or whether they were previously owned by one or many. The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic.

Justice Holmes in a dissenting opinion suggests that by a slight change in the form of the contract the Medical Company could accomplish the result it desired in a way that it would be beyond successful attack. If it should make the retail dealers also agents in law as well as in name and retain the title until the goods left their hands, as it did under the present agreements with the distributors, it could not be denied that the owner was acting within his rights.

THE NEW FRANCHISE TAX IN CALIFORNIA. An important change in the method of assessment and computation of taxes has been brought about in California by reason of the ratification at the general election held on November 8, 1910, of Senate Constitutional Amendment No. 1, providing for a separation of state revenues from those of counties, and also Senate Bill Constitutional Amendment No. 52, whereby the state voted $5,000,000 to be raised by four annual tax levies as aid to the Panama-Pacific International Exposition, to be held in San Francisco upon the completion of the Panama Canal. By virtue of the former amendment the property of the so-called public service corporations (excepting water companies) is to be taxed on a gross earnings basis, and all property used exclusively in the operation of the business of such corporations is to be exempt from all other forms of taxation, but the ratification of the Panama Exposition Constitutional Amendment contemporaneously with the Separation Amendment renders it imperative that the old ad valorem system of taxation shall continue for four years at least for the purpose of raising the said $5,000,000. Constitutional Amendment No. 1 is carried into effect by Senate Bill No. 13, approved April 1, 1911, which after providing for the manner of taxation of public service corporations, insurance companies and banks provides that all franchises other than those of the companies mentioned shall be assessed at their actual cash value and be taxed at the rate of 1 per centum each year. This paragraph is held by the State Board of Equalization to apply to all domestic and foreign corporations doing business in California, so that the situation at present in that state will require corporations to pay at least three taxes, namely: a license tax on the authorized capital payable to the Secretary of State; a tax to the County Assessor under the old ad valorem system which is to continue for four years at least for the purpose of raising funds for the proposed Exposition, and a tax on franchise under Constitutional Amendment No. 1.

CERTIFICATES OF STOCK OF NEW JERSEY CORPORATIONS, by an amendment to Section 19 of the Corporation Law of New Jersey, which went into effect March 23, 1911, may hereafter be signed by the president or vice-president and either treasurer or assistant treasurer or secretary or assistant secretary. Formerly all certificates of stock were required to be signed by the president and treasurer. The amendment above referred to also provides that all certificates heretofore issued signed by any of the officers above referred to shall be as valid and effectual for all purposes as if signed by the president and treasurer of the corporation.

CERTIFICATES OF STOCK OF MAINE CORPORATIONS, by an amendment to Section 34 of Chapter 47 of the Revised Statutes of Maine, approved March 29, 1911 (Chapter 135, Laws of 1911) may now be signed by the president or vice-president and by the cashier, secretary, clerk, treasurer and assistant treasurer. Formerly the secretary and assistant treasurer were not authorized so to sign. This amendment also permits the officers to sign stock certificates in blank when the corporation has a duly authorized transfer agent whose duty it is to countersign each certificate issued.

AS A RESULT of the decisions of the United States Supreme Court handed down on January and February of last year, as referred to in our Journal No. 17, important amendments have been made in the foreign corporation laws of Alabama, Arkansas and Kansas. The Supreme Court decisions laid down the rule that a foreign corporation cannot be taxed for the privilege of carrying on business in a state by a different and more onerous method than that used by the state in taxing domestic corporations for the same privilege, and also that a state cannot require a foreign corporation to pay a fee on its entire authorized capital for the privilege of doing business within its borders when that capital represents business and property of the corporation both within and outside of the state.

IN ALABAMA, House Bill No. 691, entitled "An Act to provide for the revenues of the State of Alabama" which became a law on April 1st, 1911, provides that foreign corporations shall pay an annual franchise tax upon the actual amount of capital employed in the state at the same rate as required of domestic corporations upon their entire authorized capital. The rate of taxation for both domestic and foreign corporation has been changed. It is interesting to note also that Sections 3654 to 3661, both inclusive, of the Code of Alabama 1907, which prohibited the removal of causes by foreign corporations from State to Federal courts have been repealed.

IN ARKANSAS, Act No. 87 of the laws of 1911, approved March 8, provides that all foreign corporations doing intra-state business, or hereafter seeking to do intra-state business, shall pay fees to be computed upon the proportion of the capital stock represented or to be represented by its property and business in Arkansas. The rate of fees to be so paid has been increased to $25 for the first $10,000 or less of the proportion of the capital stock so represented in the state, and a further fee of 1-10th of 1 per cent. additional on all amounts in excess of $10,000. The annual franchise tax on corporations has also been changed (Act 112 Laws of 1911, approved March 23, 1911) so as to require a tax of 1-20th of 1 per cent. upon that part of the subscribed or issued and outstanding capital of domestic corporations which is employed in Arkansas and upon the proportion of the outstanding capital stock of foreign corporations represented by property owned and used in business transacted in the state.

IN KANSAS, Senate Bill No. 177, approved February 2, 1911, provides that the capitalization fee to be paid by a foreign corporation upon entering the state shall be based upon the proportion of its lawfully issued capital stock proposed to be invested and used in the exercise and enjoyment of its corporate privileges within the state. The rate of this fee is not increased.

THE SECRETARY OF STATE OF COLORADO in his biennial report for the years 1909 and 1910, states that as a result of the Supreme Court cases, above referred to, all interstate commerce companies doing business in the State of Colorado, excepting one, refused to pay the annual franchise tax in 1910; and likewise many large foreign corporations. He recommends the amendment of the annual corporation license tax so as to apply upon the proportion of capital stock represented by property and business of foreign corporations in Colorado, but as yet such amendment has not been passed.

THE CAPITAL STOCK TAX ON ILLINOIS CORPORATIONS.—The Revenue Act of Illinois (Hurd's Revised Statutes 1905, ch. 120, Sec. 1) provides among other things that "the capital stock of companies and associations incorporated under the laws of this state, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal, or for printing, or for the publishing of newspapers, or for the improving and breeding of stock" shall be assessed and taxed. The Supreme Court of Illinois has held (People etc. vs. National Box Company, 248 Ill. 141) that a tax on capital stock is a tax on property and that the Legislature has no power to exempt the property of any corporation no matter for what purpose organized, except as authorized by Article 9, Section 3 of the Constitution, which refers to state, county and municipal property and property owned by certain societies and for school, religious, cemetery and charitable purposes. As a result of this decision the County Attorney of Cook County has instructed the assessors of that county to collect all back taxes due by corporations on their capital stock and not paid during the past ten years. The fact, however, that the collection of such tax in full would amount in some cases to confiscation is expected to result in a compromise.

TWENTY-THREE STATE LEGISLATURES HAVE ADJOURNED—sixteen are still in session. While corporation legislation has been passed by a great number, it has been, perhaps, of less drastic nature than that of 1909 and 1907. Anti-trust legislation has been cast into the background by the greater interest in the relation of employer and employed. Railroads also have received a great deal of attention. According to a report of statistics compiled by the American Railway Association through its Committee on the Relation of Legislation to Operation shows that in 37 states 484 bills that would directly affect operation are now pending. Of these, 113 affect employes, 88 passenger train operation, 57 inspection, 54 stations, 37 grade crossings, 17 claims, 38 right of way, and 13 freight train operation. In Missouri 64 bills of this sort have been introduced, in Indiana 34, in Wisconsin 29, in South Carolina 24, and in Kansas 23. As soon as the legislatures have adjourned we will give a resume of legislation enacted on the subject of employer's liability and workmen's compensation. We will also publish a list of the states which have ratified the amendment to the Federal Constitution providing for an income tax.

THE STANDARD OIL AND AMERICAN TOBACCO DECISIONS will be of national interest. For this reason we have arranged for the distribution of a number of these opinions as soon as they are printed. If you are interested send your name and address to any one of our offices and these opinions will be sent to you.

Laws of 1911

New laws governing the conditions under which business is conducted have been enacted in a large number of the states.

It is needless to emphasize the importance to business interests of accurate knowledge concerning these laws.

If you are interested in knowing *all* the law relating to transportation, commerce, manufacturing or similar subjects in any state, write us for further details regarding our service.

The Corporation Trust Company

37 Wall Street

New York